

REMARKS:

In the outstanding Office Action, the Examiner rejected claims 1-24. No new matter is presented. Thus, claims 1-24 are pending and under consideration. The rejections are traversed below.

REJECTION UNDER 35 U.S.C. § 102(e):

Claims 1-13 and 15-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,731,725 (Merwin).

Merwin does not teach or suggest at least the feature directed to “a dynamic determination of availability of the recipient **prior to sending the message**” and “sending the message to the selected delivery device, until the recipient receives the message”, as recited in independent claim 1. Independent claims 13, 16 and 19 recite similar features.

Instead, Merwin explicitly states:

“The SRS also includes the steps of calling the first telephone number in the order obtained pursuant to the request; if the telephone is not answered or if it is not answered by a human voice, calling the second telephone number obtained pursuant to the request; and if the second telephone number obtained is called and is not answered or is not answered by a human voice, calling a third telephone number if one was obtained pursuant to the request. These steps are repeated a predetermined number of times as determined by the SRS and if no number is answered or no number is answered by a human voice, hanging up the SRS telephone connection. The SRS may also provide a predetermined reminder message that may be selected by a user.”

(see, col. 2, lines 24-36)

As can be seen from the above discussion, Merwin does not discuss “dynamic determination of availability of the recipient prior to sending the message”, as recited in claim 1. Merwin calls the first number, then calls the second number and so forth, pursuant to the static order obtained with the initial request for delivery of the message. For the above-discussed reason, it is respectfully submitted that the Examiner has not established a priori case of anticipation. For this reason it is requested that the rejection be withdrawn.

Moreover, Merwin does not teach or suggest the “priority table of delivery devices” as recited in claim 1 that is “based on reachability of the message to a recipient of the message” which is determined “prior to sending the message.”

Merwin does not determine reachability of the recipient prior to making the call, as taught by the claimed invention. In contrast, Merwin simply calls the predetermined telephone numbers assigned to the subscriber (i.e., without determining reachability) and only determines whether a

human voice answers the call subsequent to making the call (see, col. 2, lines 24-36 and col. 7, lines 5-15). Meaning, Merwin merely telephones the previously scheduled telephone number or numbers and listens for and detects a human voice (see, col. 6, lines 57-60).

Independent claims 20-24 also recite, "dynamic" determination of availability and adjusting an order of the devices to which the message is sent. Meaning, the claimed invention of claims 20-24 ensures that the message is received by the recipient based on "dynamic" determination of that the recipient is available to receive the message via the selected device.

In contrast, Merwin merely tries to deliver to the recipient by sequentially calling telephone numbers of the subscriber until the call is answered by a human voice.

Therefore, Merwin does not disclose or suggest at least the feature of "dynamic determination of availability of the recipient **prior to sending the message**" (emphasis added), as taught by the claimed invention. Accordingly, Merwin does not disclose every element of the Applicants' independent claims. In order for a reference to anticipate a claim, the reference must teach each and every element of the claim (MPEP §2131). Therefore, since Merwin does not disclose the features recited in the independent claims, as stated above, it is respectfully submitted that claims patentably distinguishes over Merwin, and withdrawal of the §102(e) rejection is earnestly and respectfully solicited.

Claims 2-12, 15, 17-18 depend from the independent claims and include all of the features of that claim plus additional features which are not disclosed by Merwin. Therefore, it is respectfully submitted that claims 2-12, 15, 17-18 also patentably distinguish over Merwin.

Moreover, the dependent claims are also independently patentable. For example, claim 9 recites that the priority table is configured in a way that "a first delivery device selected to send a current message is a same type of device as the type of device used by the sender to create the message." Merwin does not teach or suggest a priority table having a first delivery device prioritized based on the device being "a same type of device as the type of device used by the sender to create the message", as recited in claim 9.

Therefore, withdrawal of the rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103(a):

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Merwin in view of U.S. Pub. No. 2002/0146096 (Agarwal).

As mentioned above, claim 13, upon which claim 14 depends, patentably distinguishes over Merwin. Further, as Agarwal merely discusses ways to send messages in various formats

including text, graphics, voice, text-to-speech, video, etc., Agarwal does not cure the deficiencies of Merwin regarding claim 14 of the present application.

Agarwal does not teach or suggest that "the priority delivery selection logic unit and the preferences and profiles database are located within a store and forward portion of a multimedia messaging system", as recited in claim 14.

Similar to Merwin, Agarwal does not determine reachability prior to sending the message nor dynamic determination of availability prior to sending the message. Instead, Agarwal uses the values in the database (5) to keep re-queuing the messages until the recipient acknowledges receipt based on the static hierarchy defined by the system administrator (see, paragraphs 143 and 152).

Meaning, the combination of Agarwal and Merwin does not teach or suggest "priority delivery selection logic unit located within a store and forward portion of a multimedia messaging system" (claim 14) which adjusts the priority table responsive to "a dynamic determination of availability of the recipient prior to sending the message" (claim 13 upon which claim 14 depends).

Therefore, withdrawal of the rejection is respectfully requested.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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